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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL LUCIEN GARCIA, Defendant and Appellant.	A153339 (Contra Costa County Super. Ct. Nos. 05-160797-7, 05-171502-8)

Defendant Michael Lucien Garcia pleaded no contest to multiple charges, including four counts of second degree robbery. Defendant contends his conviction must be reversed because the trial court erred in (1) denying his motion to replace appointed counsel, (2) granting his motion to represent himself, (3) not inquiring into the reasons for his request to withdraw his no contest pleas, and (4) accepting his no contest pleas without an adequate factual basis.[1] Defendant also argues his case must be remanded to allow the trial court to exercise its discretion whether to strike his firearm enhancement. We agree with defendant and the Attorney General that the matter must be remanded for the trial court to exercise its discretion whether to strike the firearm enhancement, and otherwise affirm.

[1] In a related petition for writ of habeas corpus (case No. A154207), defendant argues the trial court erred in granting his request to represent himself and denying him access to ancillary services necessary to his defense. We deny the petition today by separate order.

I. BACKGROUND

In an information filed May 20, 2016, the Contra Costa County District Attorney charged defendant with four counts of second degree robbery (Pen. Code,[2] § 211; counts 1, 6, 9, 10), with two of those counts containing an additional allegation that he personally used a firearm (§ 12022.53, subd. (b); counts 1, 6); driving recklessly while fleeing a police officer (Veh. Code, § 2800.2; count 2); two counts of felon in possession of a concealed firearm (§ 25400, subd. (a)(2); counts 4, 8); felon in possession of ammunition (§ 30305, subd. (a)(1); count 5); driving or taking a vehicle without consent (Veh. Code, § 10851, subd. (a); count 11), with an additional allegation that he had a prior auto theft conviction (§ 666.5); and receiving stolen property (§ 496d, subd. (a); count 12), with an additional allegation that he had a prior auto theft conviction (§ 666.5). The information further alleged defendant had a prior conviction that qualified as a strike (§§ 667, subds. (d), (e), 1170.12, subd. (b)) and a prior serious felony (§ 667, subd. (a)(1)) and that he had served prior prison terms (§ 667.5, subd. (b)).

On August 3, 2016, the district attorney filed a complaint charging defendant with possession of contraband in jail (§ 4573.6, subd. (a)), with allegations that he had a prior strike conviction (§§ 667, subds. (d), (e), 1170.12, subds. (b), (c)) and had served prior prison terms (§ 667.5, subd. (b)).

In February 2017, defendant pleaded no contest to the charges in the information and complaint based on an indicated sentence from the court of 15 years. On April 11, 2017, the court determined it could not give defendant a 15-year sentence because the minimum term was 17 years. The court gave defendant an opportunity to withdraw his pleas.

At the April 11 hearing, defendant also made an oral motion under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) for substitution of his assigned public defender, Michael Kelly. The court held an in camera hearing with defendant and his attorney and denied defendant's *Marsden* motion.

[2] All further statutory references are to the Penal Code unless otherwise specified.

On May 23, 2017, defendant withdrew his pleas. The same day, he exercised his right to represent himself pursuant to *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*). Defendant completed a waiver form and the court granted his *Faretta* motion.

On October 18, 2017, defendant pleaded no contest to all charges in both cases. The trial court denied his subsequent motion to withdraw his pleas and sentenced him to an aggregate term of 17 years. Defendant timely appealed and obtained a certificate of probable cause.

II. DISCUSSION

Defendant contends his conviction must be reversed because the trial court erred in (1) denying his *Marsden* motion, (2) granting his *Faretta* motion, (3) failing to adequately inquire about the reasons he sought to withdraw his pleas, and (4) failing to ensure an adequate factual basis for his no contest pleas.

A. Marsden *Claim*

Defendant first argues the trial court conducted a peremptory *Marsden* hearing, in that the court failed to actively inquire into the reasons he sought a new attorney and did not allow him the opportunity to explain his reasons. We conclude defendant's no contest pleas waived his contention that the trial court erred in denying his *Marsden* motion. As stated in *People v. Lobaugh* (1987) 188 Cal.App.3d 780 (*Lobaugh*), "Defendant makes no contention here that his [no contest] plea was not intelligently and voluntarily made. Nor does defendant urge that the advice he received from counsel was inappropriate concerning his plea resulting in the plea not being intelligently and voluntarily made. The claimed *Marsden* error does not go to the legality of the proceedings resulting in the plea. [Citations.] The defendant is thus foreclosed from raising that issue on appeal." (*Id.* at p. 786; see *People v. Lovings* (2004) 118 Cal.App.4th 1305, 1311–1312 (*Lovings*) [defendant's *Marsden* claim was waived by no contest plea, even though he had obtained certificate of probable cause].)

In his reply brief, defendant does not attempt to challenge or distinguish *Lobaugh* or *Lovings*, but argues generally his claims involve important constitutional rights deserving of review, and that we have discretion to consider his claims to avoid an

ineffective assistance of counsel claim. Defendant does not raise an ineffective assistance of counsel claim in his appeal or related habeas petition, however, nor does he contend his pleas were not voluntary and intelligent. By pleading no contest, defendant forfeited his right to claim denial of constitutional rights not going to the legality of the proceedings. (*Lovings, supra,* 118 Cal.App.4th at p. 1312 [guilty plea is a " ' " 'break in the chain of events' " ' " that may preclude claims regarding preplea rights].) In short, defendant has failed to persuade us we should depart from the holdings of *Lobaugh* and *Lovings.* We conclude defendant's *Marsden* claim is not properly before us.

B. Faretta *Claim*

Defendant next argues the trial court neglected to properly obtain a knowing and intelligent waiver of his right to counsel before allowing him to represent himself.

A defendant in a criminal case has the right under the Sixth Amendment to waive representation by counsel and represent himself. (*Faretta, supra,* 422 U.S. at p. 834.) A defendant's waiver of his right to counsel must be knowing and voluntary, and courts must "indulge every reasonable inference against such a waiver." (*People v. Boyce* (2014) 59 Cal.4th 672, 702–703.) Here, defendant does not claim that his waiver of counsel was involuntary, but instead that the court's inquiry and admonitions were inadequate. (See *People v. Sullivan* (2007) 151 Cal.App.4th 524, 544 (*Sullivan*) [defendant did "not claim his waiver of the right to counsel was other than voluntary, but rather that the record fails to show 'the warnings required by *Faretta* were given' ".)

" 'When confronted with a request' for self-representation, 'a trial court must make the defendant "aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes wide open.' " ' " (*People v. Stanley* (2006) 39 Cal.4th 913, 932.) "No particular form of words, however, is required in admonishing a defendant who seeks to forgo the right to counsel and engage in self-representation. ' "The test of a valid waiver of counsel is . . . whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case." ' " (*People v. Lawley* (2002) 27 Cal.4th 102, 140; *People v. Stanley,* at

p. 932 [on appeal, we examine the entire record to determine whether the invocation of the right of self-representation and waiver of the right to counsel was knowing and voluntary].) " '*The burden is on the defendant* to demonstrate he did not knowingly and intelligently waive his right to counsel.' " (*Sullivan, supra*, 151 Cal.App.4th at p. 547, italics added by *Sullivan*.)

People v. Lopez (1977) 71 Cal.App.3d 568 (*Lopez*), set forth three general categories of advisements and inquiries for courts to ensure the knowing and voluntary waiver of counsel under *Faretta.* Per *Lopez,* the trial court should (1) make the defendant aware of the " 'dangers and disadvantages of self-representation' "; (2) make some inquiry into the defendant's intellectual capacity; and (3) inform the defendant he or she may not later claim inadequacy of representation. (*Id.* at pp. 572–574; *People v. Daniels* (2017) 3 Cal.5th 961, 978.) Defendant contends the trial court here failed to adequately explore each of these areas. We disagree.

First, as defendant acknowledges, the court had defendant complete an advisement and waiver of right to counsel form, which contains extensive admonitions regarding defendant's constitutional rights and the dangers and disadvantages of self-representation. Defendant initialed the form to indicate he read, understood, and accepted each term, and his attorney affirmed on the record that defendant had completed the form.[3] Defendant

[3] Defendant criticizes the *Faretta* waiver form because (1) item No. 5 on the form indicates defendant was "aware of the consequences" should he be convicted but does not spell out what the consequences were; (2) contained checkmarks but not defendant's initials by items Nos. 6 through 8 concerning the charges, facts, and defenses; and (3) the trial court did not complete the "Findings and Order" section of the form. As to (1), item No. 5 states: "I am aware of the consequences should I be convicted (maximum possible sentence)." Defendant wrote immediately above item No. 5 that he understood he was charged with "Posetion [*sic*] of narcotics in jail 10 yrs" and "Robery [*sic*] Life." Further, defendant indicated at the *Faretta* hearing he was aware he was facing a 17-year-to-life sentence. Thus, the record demonstrates defendant was aware of his maximum possible sentence. (See, e.g., *People v. Jackio* (2015) 236 Cal.App.4th 445, 454–456 [advisement defendant was exposed to life sentence was not ambiguous; court was not required to specify " 'the range of allowable punishments' " where defendant was informed of maximum sentence].) As to (2), defendant argues he did not initial items Nos. 6 through 8, but the form does not provide a space for initials, only "yes" or "no" checkboxes,

complains the court's colloquy with him failed to "adequately parallel the key points enumerated in the form," but that is not dispositive. "The court might query the defendant orally about his responses on the [*Faretta*] form, to create a clear record of the defendant's knowing and voluntary waiver of counsel. [Citation.] The failure to do so, however, does not necessarily invalidate defendant's waiver, particularly when, as here, we have no indication that defendant failed to understand what he was reading and signing." (*People v. Blair* (2005) 36 Cal.4th 686, 709, disapproved on other grounds in *People v. Black* (2014) 58 Cal.4th 912, 919–920.) There is no evidence defendant did not understand the *Faretta* waiver form, nor did he give the court any indication at the hearing or anytime thereafter that he had questions about or trouble understanding any of the points he acknowledged.

Further, in its exchange with defendant, the trial court made numerous statements warning him about the dangers and disadvantages of representing himself. Specifically, the court told defendant his public defender was "one of the most experienced and knowledgeable attorneys that you could ever get." The court pointed to defendant's "limited education" and inability to "spell very simple words," informed him trial would be set for 60 days later, and cautioned defendant there was insufficient time for him to obtain the experience and education of his appointed counsel. The court admonished defendant: "You will not have unlimited supplies. There are certain limitations to representing yourself. You are not a lawyer." The court explained defendant faced four counts of robbery plus prior convictions and told defendant: "You're gonna be up against an experienced prosecutor. You are not gonna have time to become an attorney." The court repeatedly reminded defendant he would not be given extra time to try the case and he would be "on a tight leash." Defendant responded, "That sounds fine with me." He

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which he marked in the affirmative. As to (3), though the court failed to sign the prepared findings and order on the *Faretta* form, it clearly found defendant knowingly and intelligently waived his right to counsel by granting the motion. On appeal, we review de novo whether that finding is supported by the entire record. (*People v. Bush* (2017) 7 Cal.App.5th 457, 469; *Sullivan, supra,* 151 Cal.App.4th at pp. 547–548.)

reiterated several times that he wished to represent himself in spite of the court's remarks because he did not feel his sentence was fair and wanted to "prove myself innocent."

Defendant next contends the trial court failed to delve into his intellectual capacity. The court asked defendant if he knew what it took to become an attorney, and defendant said he understood it "takes a lot of college" and he did not "even have a high school education." But defendant affirmed he could read and write on his *Faretta* waiver form, as demonstrated by the fact it was completely filled in, initialed, and signed. The trial court noted defendant's "limited" education and spelling difficulties, but defendant also attended high school through 11th grade. Defendant demonstrated familiarity both with the criminal process and with his case in particular—he told the court he needed to do legal research to prove his case, needed police reports, needed to meet with an investigator, needed a legal runner, and could obtain information to do legal research through the "LRA Office." He also indicated he had given his attorney numerous notes regarding "*Pitchess*[4] motions, things like this," noted he "didn't get no lineup for my prelim," and expressed an intention to explore the conduct of police officers and identity issues in his defense. Defendant expressed his understanding he was facing 17 years to life, corrected the court about the number of prison priors he had, stated the court could "go ahead and set a prelim" on his possession of contraband case, and told the court he would like to "waive time." Nothing in the record suggests defendant lacked the intellectual ability to defend himself. (See, e.g., *People v. Daniels, supra,* 3 Cal.5th at pp. 979–980 ["Despite the absence of direct questions by [the court] about [defendant's] mental competence, [defendant] points to nothing in the record that would have raised a question about his competence."].)

Although defendant criticizes the court for not mentioning at the *Faretta* hearing his inability to later assert a claim of inadequacy of representation, he acknowledges the waiver form he signed contained that admonition. Accordingly, the record supports a

[4] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

finding defendant was aware he would "be throwing away one of the criminal defendant's favorite contentions on appeal." (*Lopez, supra,* 71 Cal.App.3d at p. 574.)

Finally, as defendant's *Faretta* waiver form acknowledged, he had represented himself on another matter before the same court that was dismissed. In that case, defendant had asked the court for investigators and made multiple requests for legal runners. Defendant also expressed a desire to represent himself on all three of his pending criminal matters in January 2017, but the court denied his request because trial was set for the following week. " ' "[A] defendant's prior experience with the criminal justice system" is, as the United States Supreme Court has concluded, "relevant to the question [of] whether he knowingly waived constitutional rights." [Citation.] That is so because previous experience in the criminal justice system is relevant to a recidivist's " 'knowledge and sophistication regarding his [legal] rights.' " ' " (*Sullivan, supra,* 151 Cal.App.4th at p. 552; *People v. Weber* (2013) 217 Cal.App.4th 1041, 1059–1060.)

Defendant urges us to look to *People v. Ruffin* (2017) 12 Cal.App.5th 536 (*Ruffin*), which he contends "points toward reversal here." *Ruffin*, however, is distinguishable in several crucial respects. There, the defendant made a *Faretta* request in the master calendar department on the date set for trial because his counsel was unavailable and the defendant wanted to proceed to trial. (*Ruffin*, at p. 540.) After suggesting he was being "stupid" for wanting to represent himself, the court recessed so the defendant could complete a *Faretta* form. The defendant did so but did not complete the space listing the charges against him. Furthermore, nothing on the form indicated the penal consequences of his convictions. (*Ruffin*, at pp. 540–541.) After court resumed, the master calendar judge confirmed the defendant had signed the form and granted the *Faretta* request. (*Ruffin*, at pp. 541–542.) The case then moved to the trial department, where the defendant asked for a continuance, said he did not want to represent himself, and explained when he said he wanted to go to trial that day, he meant with assistance from counsel. (*Id.* at pp. 542–543.) The trial judge nonetheless proceeded to trial, concluding the master calendar court had already determined the defendant's request for self-representation. (*Id.* at p. 543.)

In *Ruffin*, unlike here, the trial court made no oral advisements other than stating it was unwise for the defendant to represent himself. The *Faretta* waiver form signed by the defendant was blank as to the charged crimes, the court did not ascertain whether he understood the charges against him, and neither the court nor the waiver form informed the defendant of the penal consequences of his conviction, including a prison term of 27 years to life. (*Ruffin*, *supra*, 12 Cal.App.5th at pp. 546–547.) Further, the appellate court noted the defendant's comments to the trial department judge showed his request for self-representation "was 'made in passing anger or frustration' about the need to continue the trial and that appellant immediately expressed 'ambivalence about self-representation.' " (*Id.* at p. 550.)

Here, by contrast, the trial court made multiple statements to defendant about the risks of proceeding without counsel. Defendant was aware of the charges against him as well as the maximum possible punishment, as indicated both by his own handwritten responses on the *Faretta* waiver form and his colloquy with the court. Nor did defendant ever express ambivalence or equivocation about representing himself. Further, unlike the defendant in *Ruffin*, whose *Faretta* motion was heard in the master calendar department, defendant here had consistently appeared before the same judge, including while representing himself on another matter. Thus, the court was more familiar with defendant's intellectual capacity, experience with criminal procedure, and knowledge of his own case, as reflected in our review of the reporter's transcripts submitted on appeal.

That said, we acknowledge the trial court's colloquy with defendant was not a model of thoroughness or respectful inquiry. Other than generally asking defendant why he wanted to represent himself, the court did not probe defendant about his responses on the waiver form, orally confirm on the record he read or understood it or proceed systematically through each of the specific admonitions suggested, for example, by the appellate court in *Lopez*. (See *Lopez, supra,* 71 Cal.App.3d at pp. 572–574.) Moreover, apart from blunt remarks to defendant about his own limitations, the superior qualifications of the public defender and prosecutor, and the lack of time he would have to try his case, the trial court did not develop the kind of careful, considered, complete

record we would like to see when evaluating whether a defendant has knowingly and voluntarily surrendered a fundamental constitutional right. The relevant question, however, is " 'whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case.' " (*People v. Blair, supra,* 36 Cal.4th at p. 708.)

As we have already explained, defendant unequivocally requested to represent himself, had represented himself previously in a different matter before the same court, completed a detailed *Faretta* waiver form, understood the maximum potential punishment he faced, demonstrated familiarity with the proceedings and possible defenses, and recognized his own shortcomings but positively affirmed his desire to proceed without counsel. The trial court, and particularly the waiver form defendant signed, warned him about the dangers and disadvantages of representing himself. Nothing in this record indicates defendant did not voluntarily waive his right to counsel or lacked the intellectual capacity to represent himself. In sum, upon review of the entire record, we conclude defendant was aware of the risks of self-representation and knowingly and intelligently waived his right to counsel.[5] (*Faretta, supra,* 422 U.S. at p. 835.)

C. *Request to Withdraw Pleas*

Defendant next claims the trial court prejudicially erred in not inquiring further into defendant's reasons for seeking to withdraw his no contest pleas. Approximately one week after his no contest pleas, defendant submitted several handwritten documents to the trial court, including a "motion" titled "To: Be Considered." In the motion, defendant stated he would "move to beg the court [for] mercy" and said he was "confused, scared, and incompetent when [he] signed this deal without an Attorney."

[5] Because we conclude the record reflects defendant was adequately warned about the dangers of self-representation, we do not address the parties' arguments concerning whether a *Faretta* violation would require automatic reversal or application of the *Chapman* harmless beyond a reasonable doubt standard. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

Defendant also stated he was "not in the right state of mind scared of trial with not the knowledge equivalent to conduct such of life changing trial and incompetent to sign an [*sic*] deal without an attorney representing me." Defendant "beg[ged]" the court to "terminate [his] plea deal as soon as possible" and appoint an attorney for him, and expressed concern about the preservation of his appellate rights.

At a hearing the following week, the court told defendant: "Your appellate rights do not start until you're sentenced. So I am not allowing you to withdraw the plea as you stated in one of these. You went through one plea form with Mr. Kelly, originally. Then I went very carefully with you through, actually, the same plea form as modified when you pled on . . . October 18th." The court explained it had "put the sentencing over as a courtesy to you to let you stay in local custody a little longer, not for the purposes that you are addressing at this time." The court then sentenced defendant to an aggregate term of 17 years.

Section 1018 provides, in part: "On application of the defendant at any time before judgment . . . the court may, and in [the] case of a defendant who appeared without counsel at the time of the plea the court shall, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. . . . This section shall be liberally construed to effect these objects and to promote justice." A defendant seeking to withdraw a guilty plea must establish good cause by clear and convincing evidence. (*People v. Cruz* (1974) 12 Cal.3d 562, 566.) The California Supreme Court has defined good cause as "[m]istake, ignorance or any other factor overcoming the exercise of free judgment." (*Id.* at p. 566.) "Other factors overcoming [a] defendant's free judgment may include inadvertence, fraud or duress." (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208.) We review a trial court's decision to deny a motion to withdraw a guilty or no contest plea for abuse of discretion. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.)

Defendant's only stated reasons for seeking to withdraw were that he was confused, scared, and incompetent. Absent further explanation or evidence, none of these reasons by themselves demonstrate mistake, ignorance, or duress sufficient to overcome

the exercise of defendant's free judgment. (See, e.g., *People v. Cruz, supra,* 12 Cal.3d at pp. 566–567 [defendant's declaration that he was " 'confused' " when entering his plea did not establish good cause for withdrawal when defendant did not even specify the nature of his confusion]; *People v. Huricks, supra,* 32 Cal.App.4th at p. 1208 [claim defendant was " 'confused and indecisive' " about whether to accept plea deal and felt pressure from family members did not establish good cause for withdrawal]; *People v. Simmons* (2015) 233 Cal.App.4th 1458, 1466 (*Simmons*) [" 'buyer's remorse' " is insufficient to establish good cause to set aside a plea].)[6]

In his opening brief, defendant does not even argue he made an adequate showing of good cause. He contends only that the trial court "gave no basis—much less a reasonable basis showing the exercise of sound discretion—for its decision refusing to allow plea withdrawal." Our review, however, is concerned with whether defendant demonstrated good cause and whether the court's denial of his request to withdraw his pleas was an abuse of discretion. (*Simmons, supra,* 233 Cal.App.4th at p. 1466 [challenge to denial of motion to withdraw plea will fail on appeal unless defendant can show the motion was supported by clear and convincing evidence of good cause].) On this record, we easily conclude there has been no showing the trial court abused its discretion in refusing to allow defendant to withdraw his pleas.

D. *Factual Basis for Pleas*

Finally, defendant contends his no contest pleas were invalid because they lacked an adequate factual basis. Under section 1192.5, the trial court "shall . . . cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily

[6] Curiously, defendant relies on *Simmons,* a case from this division, in his reply brief, but incorrectly argues we affirmed the trial court's *denial* of a motion to withdraw. In *Simmons,* we concluded the trial court did not abuse its discretion in *granting* a motion to withdraw a plea. (*Simmons, supra,* 233 Cal.App.4th at p. 1466.) We also, however, reiterated the general legal principles governing challenges to section 1018 rulings, which, as here, "usually arise where a defendant pleads guilty, later unsuccessfully tries to withdraw the plea, and then appeals the trial court's *denial* of the motion to withdraw." (*Simmons,* at p. 1466, **italics added by *Simmons***.)

made, and that there is a factual basis for the plea." (§ 1192.5, 3d par.) Defendant argues the trial court abused its discretion by not making an adequate inquiry of defendant regarding the factual basis for his no contest pleas.

On his plea form, defendant acknowledged: "I have read the police reports and I am satisfied that I know the evidence that could be used against me to these charges, as well as any possible defenses." He also acknowledged: "I believe and agree that a jury or judge who heard the evidence against me could find me guilty of the charges to which I am pleading guilty/no contest." During the plea colloquy with the court, defendant confirmed that he had reviewed the plea form and agreed there was a factual basis for the pleas. The prosecutor also recognized there was a factual basis for the pleas.

Earlier in the case, when defendant was represented by counsel, he had also pleaded no contest to the same charges. At that time, defendant also confirmed in writing he had discussed the police reports with his counsel and understood the evidence against him and his possible defenses. During the plea colloquy, he confirmed he had gone over the plea form and was able to ask questions of his counsel. His counsel and the prosecutor agreed there was a factual basis for the pleas.

We reject defendant's argument the pleas were invalid under the circumstances here. First, as the Attorney General notes, a court need not inquire into the factual basis for an unconditional or open plea. (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1184.) Here, defendant pleaded to all charges based on the court's indicated sentence, and therefore the court was not required to inquire into the factual basis of the pleas.

Second, even if the court were required to make an inquiry, it satisfied itself there was an adequate factual basis where both defense counsel and the prosecutor had previously stipulated to a factual basis for the pleas, defendant acknowledged in writing he had reviewed the police and investigative reports and was satisfied with the factual basis for the pleas, the trial court confirmed orally with defendant there was a factual basis for the pleas, and defendant did not protest his factual innocence. (See, e.g., *People v. Palmer* (2013) 58 Cal.4th 110, 119.)

Third, even if the trial court's inquiry was inadequate, any error was harmless because the record shows there was a factual basis for the pleas. Defendant approached four cashiers at various Walmart locations and told them to give him the money in their cash drawers. Two of the victims saw that he had a gun. All of his victims were scared or nervous and complied with his demands. After he left the last robbery, he led a police officer on a high-speed chase. He was driving a stolen car, threw a gun and magazine loaded with ammunition out of the car, and had over $2,000 in cash on him when caught. At the preliminary hearing, the court admitted a certified copy of defendant's record to prove his prior convictions. Defendant was also caught with over 5 grams of heroin while he was in jail on other charges. There was evidence to support each of the crimes to which defendant pleaded no contest, and any error by the court in failing to inquire about the factual basis for the pleas was harmless.

E. *Firearm Enhancement*

Defendant argues (and the Attorney General agrees) he is entitled to a remand of the firearm enhancement pursuant to new legislation which grants trial courts the discretion to strike or dismiss a firearm enhancement. (§ 12022.53, subd. (h); *People v. McDaniels* (2018) 22 Cal.App.5th 420, 424 [amendment granting trial courts discretion to strike firearm enhancements is retroactive for cases not yet final on appeal].) We will remand to permit the trial court to exercise its discretion whether to strike, dismiss, or impose the firearm enhancement.

III. DISPOSITION

Defendant's convictions are affirmed, but the case is remanded for the trial court to consider whether to strike the firearm enhancement imposed under section 12022.53. The court shall forward the amended abstract of judgment to the Department of Corrections and Rehabilitation.

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Margulies, J.

We concur:

_____
Humes, P. J.

_____
Banke, J.

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